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JUSTICE PASS TO JOHN EULER, ANDREW NORMAN

E.O. 12958: N/A
TAGS: [KJUS](#) [IZ](#)
SUBJECT: KRG JUDICIAL INDEPENDENCE AT ISSUE IN DRAFT LAW

REF:

[11](#). (U) SUMMARY: The Kurdistan National Assembly (KNA) will consider a draft bill to establish a Judicial Institute in the Kurdish region, similar to the Judicial Training Institute of Baghdad, after their winter recess in January. Rule of Law representatives from the Erbil RRT and Baghdad PRT and the Office of the Rule of Law Coordinator met with the Kurdistan Minister of Justice, the Chief Judge of the Kurdish Regional Government (KRG) Court of Cassation and head of the Kurdish Judicial Institute, and the Kurdistan National Assembly legal committee mid-December to discuss the law. Drafting in the law stands at a crossroads, as the Kurds determine whether to structure the institute under the Executive or the independent judiciary. An educated, independent judiciary is essential to Rule of Law efforts in the region. Kurdish citizens will need to rely on the judiciary to resolve commercial disputes, guard procedural rights of defendants, as well as to protect human rights, women's rights, and the rights of minorities. END SUMMARY.

BACKGROUND

[12](#). (U) Since 1992, sectarian strife has prevented Kurdish individuals from attending the Judicial Training Institute in Baghdad. The resulting deficit of specialized judicial training for a large swath of appointed judges in the Kurdistan region potentially exacerbates problems common to the Iraqi criminal law system, such as confession-based hearings and failure to enforce the procedural rights of detained individuals. The newly established Shura Council within the Kurdistan Ministry of Justice (KMoJ) has drafted a bill to establish a judicial institute in the Kurdistan region. This draft has been submitted to the Council of Ministers and will be considered by the KNA after their winter recess. At an earlier meeting with the representatives of the Office of the Rule of Law Coordinator, the Director of the long-standing Baghdad Judicial Training Institute (JTI), Dr. Ahlam Al-Jabiri, expressed unofficial disapproval of the establishment of the Kurdistan Judicial Institute because she believes there should be one central institute in Iraq, but she confirmed that the JTI does not have Kurdish student participation.

[13](#). (SBU) Until 2007, judicial affairs were handled within the KMoJ. The Kurdistan Region has been operating as a semi-autonomous region since 1992 with two sets of parallel institutions to those in the Federal Government. Until the Unification Agreement of January 21, 2006, the two main Kurdish factions, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), each had separate administrations. KDP controlled the provinces of Erbil and Dohuk and PUK, Sulimaniyah. With Unification, the effort to establish an independent judiciary in the Kurdistan Region followed. The judiciary was made independent from the executive branch by the Judicial Powers Act passed by the KNA in 2007.

GOI JUDICIAL INSTITUTE UNDER MOJ (or EXECUTIVE) CONTROL

[14](#). A similar restructuring occurred in Baghdad with the federal Higher Judicial Council (HJC) becoming independent from the

executive branch in 2003. However, the HJC was unsuccessful in its efforts to regain control over the JTI, which trains new judicial candidates. This has been a source of consternation for the leadership of the HJC, as they consider Ministry of Justice (MoJ)-management of the institute, executive interference in judicial affairs, and because the status of a judge in a civil law system is highly desired, control over the selection of judges is vulnerable to politicization. The student body of the Institute comprises the majority of the incoming Iraqi judges, and although the Chief Judge of the Court of Cassation, Judge Medhat Mahmoud, is the Chairman of the JTI Governing Council, which is responsible for student selection and curriculum development, there is still a valid concern of executive influence in the vetting and training of Iraqi judges. The Director General of the JTI is a MoJ employee, not a judge, and is responsible for proposing curriculum updates to the governing council.

KJC AND KNA LEGAL COMMITTEE CONCERNS FOR JUDICIAL INDEPENDENCE

15. (SBU) Discussions with the head of the Kurdistan Court of Cassation, Chief Judge Ahmed, reveal that the leadership of the KJC holds concerns similar to those of the HJC in regards to the current KMoJ draft law. Chief Judge Ahmed said that he had discussed the situation with Chief Judge Medhat Mahmoud. The current draft law for the Kurdistan Judicial Institute arguably creates additional concerns for judicial independence and politicization of the judiciary as it provides the Kurdistan Minister of Justice with a veto over the decisions of the Institute's Governing Council. The KNA Legal Committee raised this concern with U.S. representatives. They believe that structuring the judicial institute under the KMoJ could potentially conflict with the Judicial Powers law. They pointed out inconsistencies in provisions in the Judicial Powers law

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of 2007 guaranteeing financial and administrative independence to the judiciary and provisions in the draft law locating the institute under direction of the KMoJ.

U.S. REPS ADVISE STRUCTURING JUDICIAL INSTITUTE UNDER KJC

16. (SBU) In regards to judicial independence, Rule of Law representatives from the Erbil RRT and Baghdad PRT and the Office of the Rule of Law Coordinator pointed out that the law could also potentially conflict with the Iraqi Federal Constitution and the currently drafted Kurdistan Regional Constitution, and highlighted the provision in the draft law giving a veto to the Ministry of Justice. The Iraqi Federal Constitution states that the HJC is the competent body to manage judicial affairs in Iraq. However, the linkage between HJC and KJC has been weak to date. The HJC has room for representation from the KJC, but preliminary discussions on linkages between the two bodies have been held only recently. The Kurdish Regional Constitution similarly states that the judiciary has power over all juridical persons within the Kurdistan region. The representatives asked the KNA legal committee if they had asked for guidance from the KJC regarding the law. The Legal Committee said they would involve the KJC in review of the law, particularly because in their legal opinion, the judicial institute should be located under the KJC and not the KMoJ.

LEGISLATING FOR INSTITUTE DEVELOPMENT ENCOURAGED

17. (SBU) The representatives said they were pleased by the inclusion of commercial law and forensics courses in the initial set curriculum and encouraged a substantial initial investment in infrastructure. The draft law lacked an exception for waiving the requirement of 3 years legal experience in Iraq for foreign applicants. The representatives suggested that due to the relative security of the North, the Kurdistan Judicial Institute had the potential to become a center of learning of interest to surrounding states, so it should perhaps not exclude foreign applicants, and that the Ministry should also consider arranging continuing legal education for judges at the institute. The Minister and KNA appeared highly receptive to the suggestions for institute development, and expressed interest in gaining the advice from

regional experts in developing the institute. Judge Mansour Hadidi, General Director of the Judicial Institute of Jordan has agreed to act as an advisor to Kurdistan government officials in the development of a judicial institute.

CROCKER